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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDRICK ALBERT COOPER,

Defendant and Appellant.

B215582

(Los Angeles County Super. Ct.  
No. TA103331)

APPEAL from a judgment of the Superior Court of Los Angeles County, John J. Cheroske, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant and appellant Fredrick Albert Cooper was charged in count one with carjacking (Pen. Code, § 215, subd. (a)),<sup>1</sup> in count 2 with kidnapping to commit another crime (§ 209, subd. (b)(1)), and in count 3 with robbery (§ 211). It was further alleged defendant had suffered a prior conviction under the three strikes law (§§ 1170.12, subds. (a)-(d), 667, subd. (b)-(i)) and a serious felony prior conviction (§ 667, subd. (a)(1)), and that he had served five prior prison terms (§ 667, subd. (b)).

It appears from the preliminary hearing transcript that the prosecution theory in this action was that defendant's DNA was found in blood recovered from a car that was the subject of the charged offenses. Trial counsel filed an in limine motion to preclude testimony that defendant was the source of DNA found at the crime scene because of flaws in the statistical frequency analysis of a "cold hit" DNA. The motion was supported by several hundred pages of attachments.

Before a ruling on the DNA exclusion motion, defendant entered a plea of guilty to the carjacking charge and admitted serving two prior prison terms in return for a sentence of seven years in state prison. All remaining charges and allegations were dismissed by the prosecution. Defendant filed a timely notice of appeal.

We appointed counsel to represent defendant on appeal. On October 26, 2009, counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 raising no issues and asking this court to independently review the record. Defendant was notified by letter of his right to file a supplemental brief.

On November 19, 2009, defendant filed a brief arguing he was denied constitutionally effective representation in the trial court. Defendant contends trial counsel filed a motion to bar introduction of DNA evidence, but before the motion was heard, counsel allowed defendant to plead guilty. Defendant's contention is that his motion would have been meritorious because there is a dispute in the scientific community regarding the statistical significance of a "cold hit" DNA analysis.

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<sup>1</sup> All statutory references are to the Penal Code.

In order to succeed on a claim of ineffective assistance of counsel, the defendant must show counsel's performance fell below an objective standard of reasonableness and actual prejudice flowing from counsel's performance, i.e., a reasonable probability of a different result. (*Strickland v. Washington* (1988) 466 U.S. 668, 687-688, 691-692.) We defer to trial counsel's tactical decisions. (*People v. Frye* (1998) 18 Cal.4th 894, 979; *People v. Bolin* (1998) 18 Cal.4th 297, 333; *People v. Scott* (1997) 15 Cal.4th 1188, 1212.) If the record does not explain counsel's action, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel's acts or omissions. (*People v. Weaver* (2001) 26 Cal.4th 876, 925; *People v. Earp* (1999) 20 Cal.4th 826, 896.)

Defendant's claim of ineffective assistance of counsel is without merit. First, the record is silent regarding counsel's role in defendant's decision to plead guilty. We have no basis for determining if defendant entered his guilty plea at the urging of counsel or over her objection. Second, defendant received a highly favorable disposition, and it is clearly within the range of reasonable assistance to have supported a case disposition limiting defendant's sentence to seven years in prison, considering that his maximum exposure was over twenty years in prison. Finally, defendant cannot establish prejudice, as the motion to exclude the DNA statistical analysis was without merit. (*People v. Nelson* (2008) 43 1242, 1266.)

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.